

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 386

Introduced by Assembly Member Ruskin

February 23, 2009

An act to amend Section 67302 of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as amended, Ruskin. ~~Postsecondary~~ *Public postsecondary* education: instructional materials: disabled students.

(1) Existing law requires publishers and manufacturers of printed instructional material for use at public postsecondary *educational* institutions to provide the material, upon request, in an electronic format that is compatible with commonly used braille translation and speech synthesis software, when those materials are to be used by a student whose disability prevents him or her from using standard instructional materials and other requirements are met.

Existing law also requires publishers and manufacturers to provide *computer files or other* electronic versions of nonprinted instructional materials, defined to include materials that require the availability of electronic equipment in order to be utilized, when technology is available to convert those nonprinted materials to a format that is compatible with braille translation or speech synthesis software.

This bill would expand the definition of nonprinted instructional materials to include audiovisual works *and digital media files, including* podcasts; and Web clips. This bill would define podcasts as an audio or video program in digital format delivered over the Internet for playback on a computer or portable digital device.

This bill would require that the electronic versions of nonprinted instructional materials be compatible with audiovisual captioning software for the deaf, in addition to braille translation and speech synthesis software for the blind.

The bill would additionally require publishers and manufacturers to provide a captioned copy of nonprinted instructional materials, upon request by a public postsecondary educational institution, and would authorize the public postsecondary educational institution to create a captioned copy, subject to prescribed conditions, if the publisher or manufacturer fails to provide the captioned copy.

(2) Existing law states that these provisions do not prohibit a postsecondary educational institution from assisting a disabled student by using the electronic version of printed instructional material provided pursuant to these provisions to transcribe the printed materials into braille.

This bill, in addition, would state that these provisions do not prohibit a postsecondary educational institution from assisting a disabled student by using the electronic version of printed and nonprinted instructional material to transcribe the materials into braille or captioning.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 67302 of the Education Code is amended
2 to read:
3 67302. (a) An individual, firm, partnership, or corporation
4 that publishes or manufactures printed instructional materials for
5 students attending the University of California, the California State
6 University, or a California Community College, shall provide to
7 the university, college, or particular campus of the university or
8 college, for use by students attending the University of California,
9 the California State University, or a California Community College,
10 any printed instructional material in an electronic format mutually
11 agreed upon by the publisher or manufacturer and the college or
12 campus. Computer files or electronic versions of printed
13 instructional materials shall maintain the structural integrity of the
14 printed instructional material, be compatible with commonly used
15 braille translation and speech synthesis software, and include
16 corrections and revisions as may be necessary. The computer files

1 or electronic versions of the printed instructional material shall be
2 provided to the university, college, or particular campus of the
3 university or college at no additional cost and in a timely manner,
4 upon receipt of a written request that does all of the following:

5 (1) Certifies that the university, college, or particular campus
6 of the university or college has purchased the printed instructional
7 material for use by a student with a disability or that a student with
8 a disability attending or registered to attend that university, college,
9 or particular campus of the university or college has purchased the
10 printed instructional material.

11 (2) Certifies that the student has a disability that prevents him
12 or her from using standard instructional materials.

13 (3) Certifies that the printed instructional material is for use by
14 the student in connection with a course in which he or she is
15 registered or enrolled at the university, college, or particular
16 campus of the university or college.

17 (4) Is signed by the coordinator of services for students with
18 disabilities at the university, college, or particular campus of the
19 university or college, or by the campus or college official
20 responsible for monitoring compliance with the Americans with
21 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university,
22 college, or particular campus of the university or college.

23 (b) An individual, firm, partnership, or corporation specified in
24 subdivision (a) may also require that, in addition to the conditions
25 enumerated above, the request shall include a statement signed by
26 the student agreeing to both of the following:

27 (1) He or she will use the electronic copy of the printed
28 instructional material in specialized format solely for his or her
29 own educational purposes.

30 (2) He or she will not copy or duplicate the printed instructional
31 material for use by others.

32 (c) If a college or university permits a student to directly use
33 the electronic version of an instructional material, the disk or file
34 shall be copy-protected or the college or university shall take other
35 reasonable precautions to ensure that students do not copy or
36 distribute electronic versions of instructional materials in violation
37 of the Copyright Revisions Act of 1976, as amended (17 U.S.C.
38 Sec. 101 et seq.).

39 (d) (1) An individual, firm, partnership, or corporation that
40 publishes or manufactures nonprinted instructional materials for

1 students attending the University of California, the California State
2 University, or a California Community College shall provide
3 computer-files *files, captioned copies*, or other electronic versions
4 of the nonprinted instructional materials for use by students
5 attending the University of California, the California State
6 University, or a California Community College, subject to the
7 same conditions set forth in subdivisions (a) and (b) for printed
8 instructional materials, when technology is available to convert
9 these nonprinted instructional materials to a format that maintains
10 the structural integrity of the nonprinted instructional materials
11 that is compatible with braille translation, speech synthesis
12 software, and audiovisual captioning software.

13 (2) *The individual, firm, partnership, or corporation shall*
14 *provide a captioned copy of nonprinted instructional materials,*
15 *pursuant to paragraph (1), within two weeks of receipt of a written*
16 *request for a captioned copy, as described in subdivision (a). If*
17 *the individual, firm, partnership, or corporation fails to provide*
18 *the captioned copy within the two-week period, the University of*
19 *California, the California State University, or the California*
20 *Community Colleges may create a captioned copy of the nonprinted*
21 *instructional materials, to the extent permitted by the Copyright*
22 *Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.),*
23 *and subject to the same conditions set forth in subdivisions (a)*
24 *and (b).*

25 (e) For purposes of this section:

26 (1) “Instructional material or materials” means textbooks and
27 other materials written and published primarily for use by students
28 in postsecondary instruction that are required or essential to a
29 student’s success in a course of study in which a student with a
30 disability is enrolled. The determination of which materials are
31 “required or essential to student success” shall be made by the
32 instructor of the course in consultation with the official making
33 the request pursuant to paragraph (4) of subdivision (a) in
34 accordance with guidelines issued pursuant to subdivision (i).
35 “Instructional material or materials” does not include nontextual
36 mathematics and science materials until the time software becomes
37 commercially available that permits the conversion of existing
38 electronic files of the materials into a format that is compatible
39 with braille translation software, audiovisual captioning software,
40 or alternative media for students with disabilities.

1 (2) “Printed instructional material or materials” means
2 instructional material or materials in book or other printed form.

3 (3) “Nonprinted instructional materials” means instructional
4 materials in formats other than print, and includes instructional
5 materials that require the availability of electronic equipment in
6 order to be used as a learning resource, including, but not
7 necessarily limited to, software programs, video disks, audiovisual
8 works, digital media files (including “podcasts” and “Web clips”),
9 and video and audio tapes. For purposes of this paragraph,
10 “podcast” means an audio or video program in digital format
11 delivered over the Internet for playback on a computer or portable
12 digital device.

13 (4) “Structural integrity” means all of the printed instructional
14 material, including, but not limited to, the text of the material,
15 sidebars, the table of contents, chapter headings and subheadings,
16 footnotes, indexes, glossaries, and bibliographies. “Structural
17 integrity” need not include nontextual elements such as pictures,
18 illustrations, graphs, or charts. If good faith efforts fail to produce
19 an agreement pursuant to subdivision (a) between the publisher or
20 manufacturer and the university, college, or particular campus of
21 the university or college, as to an electronic format that will
22 preserve the structural integrity of the printed instructional material,
23 the publisher or manufacturer shall provide the instructional
24 material in ASCII text and shall preserve as much of the structural
25 integrity of the printed instructional material as possible.

26 (5) “Specialized format” means braille, captioned audiovisual
27 works, audio, or digital text that is exclusively for use by blind,
28 deaf, or other persons with disabilities.

29 (f) (1) Nothing in this section shall be construed to prohibit a
30 university, college, or particular campus of the university or college
31 from assisting a student with a disability by using the electronic
32 version of printed or nonprinted instructional material provided
33 pursuant to this section solely to transcribe or arrange for the
34 transcription of the printed or nonprinted instructional material
35 into braille or captioning. ~~In the event a transcription is made, the~~
36 ~~into braille or captioning.~~

37 (2) *If a transcription is made, or a captioned copy is created*
38 *pursuant to paragraph (2) of subdivision (d), the campus or college*
39 *shall have the right to share the braille or captioned copy of the*

1 ~~printed or nonprinted~~ instructional material with other students
2 with disabilities.

3 (g) The Chancellor of the California Community Colleges, the
4 Chancellor of the California State University, and the President
5 of the University of California may each establish one or more
6 centers within their respective segments to process requests for
7 electronic versions of instructional materials pursuant to this
8 section. If a segment establishes a center or centers, each of the
9 following shall apply:

10 (1) The colleges or campuses designated as within the
11 jurisdiction of a center shall submit requests for instructional
12 material made pursuant to paragraph (4) of subdivision (a) to the
13 center, which shall transmit the request to the publisher or
14 manufacturer.

15 (2) If there is more than one center, each center shall make every
16 effort to coordinate requests within its segment.

17 (3) The publisher or manufacturer of instructional material shall
18 be required to honor and respond to only those requests submitted
19 through a designated center.

20 (4) If a publisher or manufacturer has responded to a request
21 for instructional materials by a center, or on behalf of all the centers
22 within a segment, all subsequent requests for these instructional
23 materials shall be satisfied by the center to which the request is
24 made.

25 (h) Nothing in this section shall be deemed to authorize any use
26 of instructional materials that would constitute an infringement of
27 copyright under the Copyright Revision Act of 1976, as amended
28 (17 U.S.C. Sec. 101 et seq.).

29 (i) The governing boards of the California Community Colleges,
30 the California State University, and the University of California
31 shall each adopt guidelines consistent with this section for its
32 implementation and administration. At a minimum, the guidelines
33 shall address all of the following:

34 (1) The designation of materials deemed “required or essential
35 to student success.”

36 (2) The determination of the availability of technology for the
37 conversion of nonprinted materials pursuant to subdivision (d) and
38 the conversion of mathematics and science materials pursuant to
39 paragraph (4) of subdivision (e).

- 1 (3) The procedures and standards relating to distribution of files
- 2 and materials pursuant to subdivisions (a) and (b).
- 3 (4) Other matters as are deemed necessary or appropriate to
- 4 carry out the purposes of this section.
- 5 (j) Failure to comply with the requirements of this section shall
- 6 be a violation of Section 54.1 of the Civil Code.

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